SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Alpert | Analyst: Marion Mann DeJong | Bill Number: SB 304

Related Bills: See Prior Analysis | Telephone: 845-6979 | Amended Date: 06/27/2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Combined Reporting/Top Tier Corporations of Commonly Controlled Groups/Regulated Public Utility Group

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended __________.

__X__ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

__X__ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 19, 1999.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO ______________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 19, 1999, STILL APPLIES.

_____ OTHER - See comments below.

SUMMARY OF BILL

This bill would allow "top tier" corporate taxpayers to elect to include all the income and apportionment factors of the members of a designated regulated public utility group (as defined) in a combined report, regardless of whether the group members are unitary. Also, this bill would define "unitary business" for a non-electing regulated public utility group as one with business activities showing an operational interdependence (as defined), a strong central management (as defined), or a qualified holding company relationship (as defined).

SUMMARY OF AMENDMENT

The June 27, 2000, amendments deleted the intent language that stated the intent of the Legislature both to define the term unitary business and to enact provisions to allow public utilities to elect to be treated as a unitary business. The amendments added language that in fact both defines the term unitary business and allows public utilities to elect to be treated as a unitary business. The amendments effectively eliminated the January 26, 2000, amendment and reinstated the bill to the April 19, 1999, version.

Except for the effective date and tax revenue estimate, the department's analysis of the bill as amended April 19, 1999, still applies. The effective date and tax revenue estimate have been revised to reflect the year the bill may be enacted and are provided below. The department's implementation and technical considerations and the Board's position are provided below.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to income years beginning on or after January 1, 2000.

Board Position:

_____ S   _____ NA   _____ NP
_____ SA   _____ O   _____ NAR
__X__ N   _____ OUA   _____ PENDING

Legislative Director	Date
Johnnie Lou Rosas	7/19/00

IMPLEMENTATION CONSIDERATIONS

This bill would raise the following implementation considerations. Department staff is available to assist the author with any necessary amendments.

?? The operative date language in Section 25102.2 could be interpreted to “freeze” the relevant law as of the effective date of this bill by making unitary cases (covering taxes for prior years) decided after the enactment date of this bill not applicable.

?? This bill would appear to allow taxpayers to make an election for income years beginning on or after January 1, 2000. However, the election must be made before the first day of the designated income year. As a result, taxpayers with income years beginning on or after January 1, 2000, but before the date of enactment of this bill, would not be able to make the election until their next income year, while taxpayers with their income year 2000 beginning after the date of enactment of this bill would be able to make the election for their 2000 income year. In addition, the department would need time to provide necessary instructions for making elections to taxpayers. To provide consistent treatment to all taxpayers impacted by this bill's provisions and to ease the department's administration of the bill, the author may wish to consider having the bill become operative for income years beginning on or after January 1, 2001.

?? This bill would provide for the automatic renewal of an election unless the group did not constitute a designated regulated public utility group for the last 12 months of the 84-month election period. It is unclear whether this would impose an affirmative obligation upon the department to audit each group prior to renewal to determine if the group remains a designated regulated public utility group.

?? This bill would provide that if an election is terminated or not renewed, another election may not be made for any income year beginning 60 months after the last day of the election period that was terminated or not renewed. It is unclear when the 60-month period begins (the date of the termination or nonrenewal, or the end of the original 84-month election period). Further, this could be read to preclude an election for a period beginning 60 months from the date of the termination or nonrenewal.

?? It is unclear whether the **transfer** of technical or marketing information, for determining operational interdependence, would mean the physical transferring of information or the mere sharing of information.

TECHNICAL CONSIDERATIONS

The following technical amendments are provided:

?? Amendment 1 would change a word to its plural form.

?? Amendment 2 would correct an operative date. According to the author’s staff, the date should be January 1, 2000.

?? Amendment 3 would change an incorrect reference.

?? Amendment 4 would make it clear that only business income of a single corporation electing under the provisions of this bill would be subject to combination.

TAX REVENUE ESTIMATE

Based on data and assumptions discussed below, this bill would result in the following revenue losses.

Estimated Revenue Impact of SB 304 As Amended 6/27/2000 [$ In Millions]				
Fiscal Year Impact				
2000-01	2001-02	2002-03	2003-04	2004-05
minor	minor	minor	-$19	-$20
* Minor reflects a loss less than $500,000.				

The bill would be effective with income years beginning on or after January 1, 2000. This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

TAX REVENUE DISCUSSION

The revenue impact of this bill would be determined by the number of investor-owned utility corporations that elect to combine with commonly controlled entities and the resultant reduction in tax liabilities. Audit data were used as the basis for projecting revenue losses attributed to utility companies likely to combine with non-unitary commonly controlled affiliates. In addition, industry contacts furnished specific information useful for evaluating the ongoing revenue effects of this bill.

The following liability year impacts were used to project the timing of cash flow, fiscal year estimates for the bill:

Income Year Liability Impact					
[$ In Millions]					
2000	2001	2002	2003	2004	2005
-$27	-$28	-$29	-$30	-$30	-$31

The revenue estimate reflects fiscal-year cash flow impacts beginning in 2003-04 and recognizes the three-year audit cycle that would normally apply in cases where the department would reverse self-assessed taxpayer reporting under current combination standards.

BOARD POSITION

Neutral.

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on the bill as introduced February 4, 1999, with Member B. Timothy Gage abstaining.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 304
As Amended June 27, 2000

AMENDMENT 1

On page 4, line 3, strikeout "provision" and insert:

provisions

AMENDMENT 2

On page 6, line 39, strikeout "1999," and insert:

2000

AMENDMENT 3

On page 7, line 40, strikeout "25101.2," and insert:

25102.2,

AMENDMENT 4

On page 15, line 17, following the word "its" insert:

business